

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Owen Godshall	Team: Squad #4	CCRB Case #: 201501641	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 04/22/2014 5:30 AM	Location of Incident: § 87(2)(b)	Precinct: 44	18 Mo. SOL 10/22/2015	EO SOL 10/22/2015	
Date/Time CV Reported Mon, 03/09/2015 2:25 PM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Mon, 03/09/2015 2:25 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT3 David Mischo	517	937115	WARRSEC
2. Officers			MTN DET
3. SGT John Albertelli	03235	910972	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.SGT John Albertelli	Abuse: Sgt. John Albertelli entered and searched § 87(2)(b) in the Bronx.	§ 87(2)(b)
B.DT3 David Mischo	Abuse: Det. David Mischo entered and searched § 87(2)(b) in the Bronx	§ 87(2)(b)
C. Officers	Abuse: Officers entered and searched § 87(2)(b) in the Bronx.	§ 87(2)(b)
D. Officers	Abuse: Officers seized § 87(2)(b) s and § 87(2)(b) property.	§ 87(2)(b)

Case Summary

On March 9, 2015, § 87(2)(b) filed this complaint with the CCRB via mail on behalf of himself and his roommate § 87(2)(b).

At approximately 5:30 a.m. on April 22, 2014, § 87(2)(b) was awoken by knocking at his front door. When he went to the door, he saw several officers through the peephole. While § 87(2)(b) and § 87(2)(b) both stated that there were three officers outside, the investigation determined that there were only two, Sgt. John Albertelli and Det. David Mischo of the Manhattan Warrant Squad. Through the door, Sgt. Albertelli and Det. Mischo identified themselves as police officers, and stated that they wanted to ask him a few questions. When § 87(2)(b) opened the door, however, both officers immediately pushed past him and entered the apartment (**Allegations A and B**). The officers then stated that they were looking for § 87(2)(b). When § 87(2)(b) confirmed his identity, he was placed in handcuffs. § 87(2)(b) was then walked into the nearby living room and seated on the couch. § 87(2)(b) then entered the room to find out what was happening. The officers ordered § 87(2)(b) to return to his room. § 87(2)(b) complied with this order. Several minutes later, Sgt. Albertelli and Det. Mischo escorted § 87(2)(b) out of the apartment and took him to the Manhattan Warrant Squad office for arrest processing.

At an unspecified time later that day, § 87(2)(b) came back to the apartment to find an unidentified officer standing outside. § 87(2)(b) was told that he was not allowed to enter at that time. § 87(2)(b) incensed, displayed his photo identification and rental receipts to prove that he was a resident. He was then allowed into the apartment. When § 87(2)(b) entered, he found a copy of a search warrant on his kitchen table (**Allegation C**). He himself had not witnessed officers searching the apartment at any time. § 87(2)(b) looked over his apartment afterwards, and found that several objects, including tools and a hand truck that belonged to § 87(2)(b) had been removed (**Allegation D**).

Mediation, Civil and Criminal Histories

This case is ineligible for mediation § 87(2)(g). A notice of claim request was sent to the Comptroller's office on April 8, 2015. It will be included in the case file upon receipt. § 87(2)(b)'s criminal case is still open in New York County Supreme Court. His next court date is § 87(2)(b) (Encl. 11A-E). § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- § 87(2)(b) has filed one previous CCRB complaint, § 87(2)(b)
- This is the first CCRB complaint filed by or involving § 87(2)(b) (Encl. 3B).
- Sgt. Albertelli has been a member of the service for twenty three years, and there are no substantiated CCRB allegations against him. Before this complaint, Sgt. Albertelli had only one CCRB complaint made against him in 1992. In this case, a force allegation was unsubstantiated against him (Encl. 2A).

- Det. Mischo has been a member of the service for ten years, and there are no substantiated CCRB allegations against him. He has been a subject officer in four previous complaints, none of which involved entry allegations (Encl. 2B).

Findings and Recommendations

Allegation A – Abuse of Authority: Sgt. John Albertelli entered and searched § 87(2)(b) in the Bronx.

Allegation B – Abuse of Authority: Det. David Mischo entered and searched § 87(2)(b) in the Bronx.

It is undisputed that Sgt. Albertelli and Det. Mischo gained entry to § 87(2)(b) and subsequently arrested § 87(2)(b). The circumstances surrounding the entry, however, are in dispute.

§ 87(2)(b) was interviewed at Rikers Island on March 16, 2015 (Encl. 6A-C). He alleged that when Sgt. Albertelli and Det. Mischo knocked on his door, he answered by himself while § 87(2)(b) remained in his room. He stated that he spoke briefly to the officers before opening the door to address them face-to-face. Once he cracked open the door, however, the two officers pushed it open and moved past § 87(2)(b). He denied giving the officers permission to enter. § 87(2)(b) stated that he was arrested after he identified himself to the officers. § 87(2)(b) provided a telephone statement on March 18, 2015 (Encl. 7A), and answered several follow-up questions on March 20, 2015 (Encl. 7B). § 87(2)(b) stated that he remained in his room while § 87(2)(b) answered the door. He did not leave his room until after the officers had entered and arrested § 87(2)(b) and did not know the circumstances under which they had entered, or how they had identified him.

Det. Mischo was interviewed at the CCRB on April 1, 2015 (Encl. 8E-G), while Sgt. Albertelli was interviewed on April 7, 2015 (Encl. 9D-F). Both officers stated that they had come to the apartment in regards to I-card #§ 87(2)(b) which had been assigned to Det. Mischo. The I-card specified that there was probable cause to arrest § 87(2)(b) in regards to several open robbery complaints. Both officers stated that they were not aware of any kind of warrant active against § 87(2)(b) at the time of the incident. The officers stated that § 87(2)(b) rather than § 87(2)(b) came to the door. Both stated that after they explained the purpose of their visit, § 87(2)(b) explicitly allowed them into the apartment. They denied forcing their way into the apartment. The officers did not notice § 87(2)(b) until after they had entered the apartment. Both stated that they immediately recognized § 87(2)(b) based upon the photograph provided with the I-card.

Even when officers possess probable cause to arrest an individual, they cannot enter a private residence to effect the arrest without a warrant. An I-card does not satisfy this requirement. People v. Farquharson, 24 Misc. 3d 1232(A) (Sup. Ct. Bronx Cty, 2009) (Encl. 1A-F).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

They denied forcibly entering the premises. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Abuse of Authority: Officers entered and searched § 87(2)(b) in the Bronx.

Allegation D – Abuse of Authority: Officers seized § 87(2)(b) s and § 87(2)(b) property.

It is undisputed that after § 87(2)(b) was arrested, officers from the Midtown North Detective Squad entered § 87(2)(b), and seized several items, including clothing, tools and a hand truck. This entry was conducted pursuant to search warrant #§ 87(2)(b) which was requested by Det. Albert Velez of the Midtown North Detective Squad on § 87(2)(b). It was executed on the same day under the supervision of Sgt. Michael Selling, also of the Midtown North Detective Squad. The warrant and its execution were documented in an Incident File Report (Encl. 10B-C). The report specifies that the warrant was obtained in the wake of § 87(2)(b)'s arrest to retrieve stolen property and tools used in the commission of a crime. § 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date